

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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**MICHAEL WALTHER,**  
**Plaintiff,**

**v.**

**NALIN PATEL, D.M.D. *et al.*,**  
**Defendants.**

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**CIVIL ACTION**

**NO. 10-706**

**ORDER**

**AND NOW**, this 4<sup>th</sup> day of February 2011, upon consideration of a Motion to Dismiss Counts II through VIII by Defendants Nalin Patel DMD, Nalin Patel DMD PC, Advanced Dental Care, Advanced Dental Care LLC, and Fairless Hills Dental Center (“Dental Defendants”)[doc. no. 20]; a Motion to Dismiss Counts III though VIII by Defendants Capital One Bank (USA), N.A., Capital One Financial Corporation, and Capital One N.A. (“Capital One Defendants”) [doc. no. 16]; Plaintiff’s Responses in Opposition thereto [doc. nos. 29 & 31]; Dental Defendants’ and Capital One Defendants’ Replies in Support [doc. nos. 34 & 40]; and Plaintiff’s Sur-replies [doc nos. 38 & 44], and for the reasons stated in the accompanying Memorandum Opinion, it is hereby **ORDERED** that:

1. Counts VII and VIII are **DISMISSED without prejudice** for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure; and

2. Counts I, II, III, IV, V, and VI are **DISMISSED without prejudice** pursuant to 28 U.S.C. § 1367(c)(3).

It is so **ORDERED**.

**BY THE COURT:**

/s/ Cynthia M. Rufe  
**CYNTHIA M. RUFÉ, J.**